

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:BR2

PLR-139764-09

Date:

February 19, 2010

## LEGEND

Foreign Parent =

US Parent =

Sub =

Proxy LLC =

Country X =

State Y =

Date 1 =

a =

b =

PLR-139764-09

c =

Exchange =

Business A =

Department =

Agency =

Proxy Agreement =

Special Security  
Agreement =

Dear :

This letter responds to your request for rulings, dated September 1, 2009, submitted by your authorized representatives on behalf of US Parent and its affiliates. The information submitted for consideration is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **SUMMARY OF FACTS**

US Parent, a State Y corporation, was formed by Foreign Parent to acquire all of the stock of Sub, a State Y corporation. Prior to its acquisition on Date 1, Sub was the common parent of an affiliated group that filed consolidated federal income tax returns. Foreign Parent, a business entity organized under the laws of Country X, owns a% of the stock of US Parent. Approximately b% of the stock of Foreign Parent is owned by the Government of Country X, and the remaining c% is publicly traded on Exchange.

Prior to, and following, its acquisition by US Parent, Sub and its direct and indirect subsidiaries have engaged in Business A and have provided services to the Department and various other U.S. Government departments and agencies

(collectively, the “Departments”). In order to perform certain contracts, Sub and its subsidiaries are required to have security clearances granted by the Department pursuant to a program overseen by Agency. Because of the indirect foreign ownership of stock in Sub, the Department requires that Sub and its subsidiaries be effectively insulated from foreign ownership, control, or influence in order to maintain those clearances.

In order to create a security measure designed to insulate Sub and its subsidiaries from any foreign control or influence that might arise from Foreign Parent’s indirect ownership of stock in Sub and its subsidiaries, US Parent and Sub have entered into a Proxy Agreement and a Special Security Agreement (the “SS Agreement” and together with the Proxy Agreement, the “Agreements”).

To facilitate compliance with the Proxy Agreement, Sub formed Proxy LLC, a wholly-owned, State Y limited liability company, that is disregarded from its owner for U.S. federal income tax purposes. In a series of transactions, Sub will contribute to Proxy LLC all of the stock of its subsidiaries that will be subject to the Proxy Agreement (collectively, the “Proxy LLC Subsidiaries”).

#### Terms of the Proxy Agreement

Foreign Parent, US Parent, Sub, Proxy LLC, and the Department have executed the Proxy Agreement. Pursuant to the Proxy Agreement, Sub selected all of the initial proxy holders (the “Proxy Holders”), who are individuals required to: (1) be resident U.S. citizens; (2) have no prior relationship with Foreign Parent or entities controlled by Foreign Parent (other than the Proxy LLC Subsidiaries); (3) certify their willingness to accept their security responsibilities; (4) be eligible for the requisite personnel security clearance; and (5) be approved by the Department. Sub’s interest in Proxy LLC was deposited with the Proxy Holders in order to enforce the terms of the Proxy Agreement; however, the Proxy Holders will not own an interest in Proxy LLC.

The Proxy Holders became managers of Proxy LLC and are specifically authorized to take certain actions, such as electing other managers, changing or amending Proxy LLC’s Certificate of Formation or Operating Agreement (with certain express limits described below), and disposing of or pledging assets (with certain express limits described below).

The Proxy Agreement grants to the Proxy Holders voting rights with respect to the member interest in Proxy LLC, subject to certain terms and conditions. The Proxy Agreement expressly provides that the granting of the voting proxy by Sub to the Proxy Holders will not cause Sub to cease to be the sole member of Proxy LLC or cause the Proxy Holder to become a member.

The Proxy Holders are not authorized to undertake certain actions without the express written approval of Sub. Such actions include: (1) the sale, lease or other

disposition of the property, assets or business of Proxy LLC or the Proxy LLC Subsidiaries, other than in the ordinary course of business; (2) the purchase of any property or assets by Proxy LLC or the Proxy LLC Subsidiaries, other than in the ordinary course of business; (3) the incurrence of debt or the pledge, mortgage, or encumbrance of the assets of Proxy LLC or the Proxy LLC Subsidiaries, other than in the ordinary course of business; (4) the merger, consolidation, reorganization, or dissolution of Proxy LLC or the Proxy LLC Subsidiaries; or (5) the filing or making of any petition by Proxy LLC or the Proxy LLC Subsidiaries under the federal bankruptcy laws or any similar law or statute of any state or any foreign country. Furthermore, at Sub's written request, the Proxy Holders must take such actions as are necessary to recommend, authorize, or approve these actions. Moreover, the Proxy Holders may not change or amend Proxy LLC's Certificate of Formation or Operating Agreement as they relate to these actions.

While the member interest of Proxy LLC is subject to the Proxy Agreement, Sub will be entitled to receive cash distributions made upon the interest. Any distribution of additional ownership interests in Proxy LLC received by the Proxy Holders will be held for the account of Sub. Sub may sell, transfer, pledge or otherwise encumber all or any portion of the membership interest, provided that appropriate notice is given to Agency. The Proxy Holders have no right to receive distributions on the member interest in Proxy LLC, nor do they have the power to sell or otherwise transfer, pledge, or encumber the member interest.

The Proxy Holders are required to act in good faith as reasonably prudent business persons to protect Sub's legitimate economic interest in Proxy LLC and the Proxy LLC Subsidiaries. Furthermore, the Agency, the Proxy Holders, and Sub must meet semi-annually to review the purpose and effectiveness of the Proxy Agreement and to establish a common understanding of the operating requirements and how they will be implemented. In addition, Sub and the Proxy Holders must meet once a year and may meet more frequently if a majority of the Proxy Holders agree. Furthermore, while the ability of Sub to communicate with the Proxy Holders is restricted, Sub is permitted to make nonbinding suggestions or requests to the Proxy Holders at meetings with the Proxy Holders. Proxy LLC is allowed to provide Sub with financial data relating to the financial condition and financial operations of Proxy LLC.

Sub's Board of Directors may remove a Proxy Holder for acts of gross negligence or willful misconduct. In addition, with the approval of the Agency, Sub's Board may remove a Proxy Holder for acts in violation of the Proxy Agreement, including the inability to protect Sub's economic interest in Proxy LLC. A successor Proxy Holder will be nominated and appointed by the remaining Proxy Holders. Sub will be permitted to veto, without cause, any successor Proxy Holder. If Sub vetoes three successive nominees, the third nominee, upon approval of Agency, will be accepted absent an appeal by Sub to the Agency for reasonable cause.

Sub and Proxy LLC may petition the Agency to terminate the Proxy Agreement at any time and for any reason. The Agency may refuse to terminate the Proxy Agreement only when continuation is necessary in the interest of national security. The Proxy Agreement will be subject to termination by the Agency at any time under the following circumstances: (1) the sale of the business or all of the membership interests in Proxy LLC to a person or entity that is not ultimately controlled by Foreign Parent; (2) the existence of the Proxy Agreement is no longer necessary to maintain a facility security clearance for Proxy LLC; (3) the continuation of a facility security clearance for Proxy LLC is no longer necessary; or (4) there has been a breach of the Proxy Agreement that requires it to be terminated or the Agency determines that termination is in the national interest. Unless renewed, the Proxy Agreement terminates automatically five years after the date of execution.

#### Terms of the SS Agreement

In addition to the Proxy Agreement, Foreign Parent, US Parent, Sub, and the Department have executed the SS Agreement. The SS Agreement is necessary to maintain security clearances for Sub's direct business operations and for its direct and indirect subsidiaries (other than those operations and subsidiaries held by Proxy LLC).

Under the SS Agreement, US Parent does not relinquish its voting rights as the sole shareholder of Sub. Instead, the SS Agreement establishes the manner in which Sub is governed through the constitution of, and powers and obligations assigned to, Sub's Board of Directors (the "Board"). Under the SS Agreement, US Parent appoints the directors subject to limited approval rights retained by the Department. The Board consists of: (1) at least five individuals who have had no prior relationship with Foreign Parent, or entities controlled by Foreign Parent (other than the Proxy LLC Subsidiaries or other Sub subsidiaries) (the "Outside Directors"); (2) at least two representatives of US Parent (the "Inside Directors"); and (3) at least one officer of Sub with personnel security clearance (the "Officer Director"). The Agency must approve the selection of the Outside Directors as satisfying Department security requirements and the terms of the SS Agreement.

US Parent, as the sole stockholder of Sub, may remove any member of Sub's Board for any reason permitted by the provisions of applicable state law or Sub's Certificate of Incorporation or Bylaws. However, the removal of an Outside Director generally is not effective until prior notice is given, no objection is raised by the Agency, and a qualified successor has been nominated by Sub and approved by the Agency. In the event of a vacancy on Sub's Board, US Parent has the right to fill the vacancy.

Sub's Board has the power to direct and decide all matters affecting the management and operations of Sub (with certain express limitations described below). With respect to actions by Sub's Board, a majority of the directors, including at least one Inside Director and one Outside Director, is necessary to constitute a quorum.

Sub's Board is not authorized to undertake certain actions without the express written approval of US Parent. Such actions include: (1) the sale, lease or other disposition of the property, assets or business of Sub or its subsidiaries, other than in the ordinary course of business; (2) the purchase of any property or assets by Sub or its subsidiaries, other than in the ordinary course of business; (3) the merger, consolidation, reorganization, dissolution or liquidation of Sub or its subsidiaries; (4) the filing or making by Sub or its subsidiaries of any petition under the federal bankruptcy laws or any applicable bankruptcy law or other acts of similar character; (5) the initiation of action to terminate the SS Agreement (with certain limitations); (6) changes to the Bylaws or the Certificate of Incorporation of Sub or its subsidiaries (or changes to functionally equivalent governing documents for non-corporate entities); and (7) the sale, assignment, or license of Sub's or its subsidiaries' patents, technologies, and other intellectual property rights related to Business A.

US Parent retains all economic rights in the stock of Sub. Nothing in the SS Agreement limits, restricts, or otherwise diminishes the economic rights of US Parent (or of any successor shareholder) in the stock of Sub.

US Parent and Sub may petition the Agency to terminate the SS Agreement at any time and for any reason. The Department may refuse to terminate the SS Agreement only when continuation is necessary in the interest of national security. The SS Agreement will be subject to termination by the Department at any time under the following circumstances: (1) the sale of the business of Sub or the stock of Sub to a person or entity that is not ultimately controlled by Foreign Parent; (2) the existence of the SS Agreement is no longer necessary to maintain a facility security clearance for Sub; (3) the continuation of a facility security clearance for Sub is no longer necessary; or (4) there has been a breach of the SS Agreement that requires it to be terminated or the Department determines that termination is in the national interest. Unless renewed, the SS Agreement terminates automatically five years after the date of execution.

## **RULINGS**

Based solely upon the information and representations set forth above and in your submission, we rule as follows:

- (1) During the period in which the SS Agreement is in place, US Parent's ownership of the stock of Sub constitutes beneficial and therefore, direct ownership for purposes of section 1504(a).
- (2) During the period in which the Proxy Agreement is in place, Sub's ownership of the stock of the Proxy LLC Subsidiaries (through its disregarded membership interest in Proxy LLC) constitutes beneficial and therefore, direct ownership for purposes of section 1504(a).

- (3) Provided that Sub and Sub's direct and indirect subsidiaries (including the Proxy LLC Subsidiaries) are includible corporations (within the meaning of section 1504(b)) and US Parent's stock ownership in such corporations meets the requirements of section 1504(a), Sub and Sub's direct and indirect subsidiaries (including the Proxy LLC Subsidiaries) will be members of the affiliated group (within the meaning of section 1504(a)) of which US Parent is the common parent and will be permitted to join in the filing of a consolidated federal income tax return (within the meaning of sections 1501 and 1502 of the Code and the regulations thereunder) with such affiliated group.

### **PROCEDURAL STATEMENTS**

No opinion is expressed or implied about the tax treatment of any aspect of any transaction or item discussed or referenced in this letter, or the tax treatment of any conditions existing at the time of, or effects resulting from, any transaction or item that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Frances L. Kelly  
Assistant to the Branch Chief, Branch 2  
(Corporate)